

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF PENNSYLVANIA

JONATHAN R. MILLER,

Plaintiff,

v.

BREM MOLDOVSKY, et al,

Defendants.

Case No. 2:21-cv-02219-ER

Philadelphia, Pennsylvania

November 10, 2021

10:01 a.m.

TRANSCRIPT OF MOTION HEARING

BEFORE THE HONORABLE EDUARDO C. ROBRENO

UNITED STATES DISTRICT COURT JUDGE

APPEARANCES:

For the Plaintiff:

Jonathan R. Miller, Esq.

100 Overlook Center, 2nd Floor  
Princeton, NJ 08540

For the Defendants:

Brem Moldovsky, Esq.

Brem Moldovsky, LLC

100 N. 18th Street

Suite 300

Philadelphia, PA 19103

Gerald J. Pomerantz, Esq.

Gerald Jay Pomerantz & Associates

1500 John F Kennedy Blvd

2 Penn Center, Suite 1320

Philadelphia, PA 19102

Court Recorder:

Inna Goldshetyn

Clerk:

Ronald Vance

Transcription Service:

Chris Hwang

Abba Reporting

PO Box 223282

Chantilly, Virginia 20153

Proceedings recorded by electronic sound recording;  
transcript produced by transcription service.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

**INDEX**

	<u>Page</u>
Court's Ruling	27

1 (Call to order at 10:01 a.m.)

2 THE CLERK: All rise. United States District Court  
3 for the Eastern District of Pennsylvania is now in session, the  
4 Honorable Eduardo C. Robreno presiding.

5 THE COURT: Good morning, please be seated.

6 ATTORNEYS (IN UNISON): Good morning, Your Honor.

7 THE COURT: Yeah. Okay, and you may remove your mask  
8 when speaking to the Court. Okay, so we have scheduled here  
9 three discovery motions. Since then, a number of other motions  
10 have been filed.

11 And we can also take this opportunity to visit with  
12 the overall status of the case and a path forward.

13 So, Mr. Miller, what's the status of the case?

14 MR. MILLER: The status of the case is that as set  
15 out in my various motions, and I guess one or two more to be  
16 filed that the Defendants, particularly Mr. Moldovsky and his  
17 law firm are stonewalling discovery except for the half  
18 redacted 27 pages they've produced, that I've submitted to the  
19 Court in connection with a Motion For Relief To Reply that  
20 relates to Mr. Stretton's -- the Motion to Compel Mr. Stretton.

21 And Mr. Moldovsky has produced no other documents and  
22 has avoided all of my interrogatories that set out in the  
23 various motions that I'm happy to argue as that may be.

24 On my part, I just now received this morning a few  
25 minutes ago Mr. Pomerantz's responses to certain

1 interrogatories.

2 I glanced at them. I don't want to render an  
3 opinion, but I think that -- well, I don't want to render an  
4 opinion. I'd like to review it further. I don't want to  
5 express any opinion about Mr. Pomerantz or his participation  
6 of, you know, in discovery.

7 With respect to myself, we've produced many  
8 documents. I think we're approaching 10,000 pages of  
9 documents.

10 Most of those documents were already in the  
11 possession of Mr. Moldovsky. To my knowledge, they may not  
12 have been in the possession of Mr. Pomerantz. Nonetheless, I  
13 produced them.

14 THE COURT: Now, Mr. Conrad is whom?

15 MR. MILLER: Mr. Pomerantz.

16 THE COURT: Oh, Mr. Pomerantz, okay.

17 MR. MILLER: Did I misspeak? I apologize.

18 THE COURT: Oh, no, I misunderstood what you say,  
19 yeah. I had not heard that name before, so.

20 MR. MILLER: Yeah. And my understanding from Mr.  
21 Moldovsky's Motion to Compel, which he just recently filed and  
22 I have to file an opposition I guess by Monday, is that it was  
23 improper for me to give him documents that he already has.

24 There are certain documents that he did not  
25 previously have. It's a well-settled principle of law that I

1 can not be compelled to produce documents that don't exist.

2 I've made certain objections. I believe those  
3 objections are well founded, but the overall -- I think there's  
4 an overall disparity in terms of engaging in good faith with  
5 discovery obligations between the two sides.

6 We have a number of depositions scheduled or yet to  
7 be scheduled. Mr. Stretton's deposition, he's probably the  
8 primary fact witness in this matter.

9 I noticed that quite some time ago for Monday, which  
10 I think is the 15th. Just a couple minutes ago, I got an email  
11 from Mr. Moldovsky, you know, saying I can't hand it in. I  
12 just looked at it on my cell phone basically announcing that  
13 he's blocking Mr. Stretton from appearing at the deposition on  
14 Monday. He objects for, I'm not sure what reasons, but he's,  
15 you know he's blocking Mr. Stretton.

16 I view that as highly improper because Mr. Stretton  
17 was subpoenaed and is a fact witness. Whatever role he may  
18 play as an expert witness, you know, that's yet to be visited,  
19 but for my purposes, the deposition on Monday was said to  
20 be -- is set to be a deposition of a fact witness.

21 It's also set to be in person at Mr. Stretton's  
22 office, you know, with appropriate Covid precautions, I believe  
23 that --

24 Well, Mr. Moldovsky hasn't indicated, but I believe  
25 everyone else is fully vaccinated. So, I don't know the reason

1 why the deposition cannot proceed in person. Mr. Moldovsky has  
2 objected.

3 THE COURT: Well, okay. Okay, so.

4 MR. MILLER: Sir, may I?

5 THE COURT: Massive confusion.

6 MR. MILLER: Yeah, we've noticed --

7 THE COURT: That's really the bottom line.

8 Mr. Moldovsky, what's your view of the status of the  
9 matter?

10 MR. MOLDOVKY: Thank you, Your Honor. A number of  
11 things. First replying to what Mr. Miller said, we've turned  
12 over everything requested and really more than what needs to  
13 be, what should be.

14 Regarding Mr. Miller's turnover for a moment, it's  
15 highly deficient. He literally just gave us an endless pile of  
16 papers that we already have, which is supposed to look like,  
17 oh, I've turned over 10,000 pages, but we all have it already.

18 He's turned over literally nothing of what we're  
19 seeking.

20 THE COURT: Uh-huh.

21 MR. MILLER: And Your Honor didn't ask us about each  
22 motion to argue each motion.

23 THE COURT: No, we're not talking about that. No.

24 MR. MOLDOVKY: Right, so just the matter I would say,  
25 and to really address that, I would say this is a matter, Your

1 Honor, that I truly think that a mutual observer would say this  
2 matter should settle. It's not a good thing for the people  
3 involved. It doesn't forward their lives. It doesn't help the  
4 court system.

5 And we've worked very hard to try to do that and got  
6 into a place where people are willing to walk away, but then,  
7 Miller was seeking to silence us. And I can't silence myself  
8 about my life.

9 So, when you asked what's the status, that's the  
10 status. And as far as status, literally, we get correspondence  
11 almost every day.

12 Mr. Miller is using this as an opportunity, like it's  
13 been for the last three and half years, to utterly bombard us,  
14 whether it's Mr. Stretton, Mr. Pomerantz, attorneys -- other  
15 attorneys who've seen this. People have not seen this before.  
16 We have hundreds of years of attorneys with experience with law  
17 and have not seen this.

18 This is what Mr. Miller does. It is nonstop --  
19 we -- bombarding us. We barely can function, barely can live  
20 our lives.

21 Our paralegal, Mr. Pom -- we can all explain what's  
22 happening. And it's basically inane issues like 10,000  
23 documents that we already have. I don't need what I already  
24 have.

25 THE COURT: Uh-huh.

1 MR. MOLDOVKY: So, I can go further, but to give you  
2 a big picture answer --

3 THE COURT: Uh-huh.

4 MR. MOLDOVKY: -- that's the big picture answer. And  
5 we're doing our best. We're following everything. We're  
6 responding to everything. We asked discovery questions. We've  
7 got --

8 THE COURT: Well, let me ask you a question since  
9 we're talking about the general status of the matter.

10 MR. MOLDOVKY: Yeah.

11 THE COURT: I appreciate your counterclaim has been  
12 narrowed significantly, but it doesn't appear to have much of a  
13 connection to the main claim. It appears to be a collection of  
14 other incidents and experiences that you had with Mr. Miller in  
15 separate occasions.

16 The Bucks County seems to me is a fairly  
17 straightforward, factual case. The counterclaim raises a  
18 number of other issues.

19 How are they connected? I know they're not connected  
20 to the extent that they are not compulsory, but how do we  
21 benefit by trying these cases together?

22 MR. MILLER: I would say and I thought about that --

23 THE COURT: Yeah.

24 MR. MILLER: -- and I'm happy to address that. I  
25 would say a main connection point between Mr. Miller's claims

1 and my counterclaims is very simple.

2 And basically, Mr. Miller's claims are saying that  
3 during the litigation with -- between my law firm and Mr.  
4 Ellner and Lightbox, where Mr. Miller was involved, that during  
5 that, they say that my Bucks County action was like a  
6 collateral attack, it was a side attack, it was -- and so while  
7 that dispute's going on, I did this whole collateral attack to  
8 try to gain leverage in that case.

9 Well, all the things they did were also a collateral  
10 attack to try to gain leverage. I'd say to -- that most  
11 simply, Your Honor, is the most direct connection.

12 THE COURT: Uh-huh.

13 MR. MOLDOVKY: I can go on, but that simply put is  
14 the most direct connection, that there were -- that both sides  
15 were alleging that these activities were collateral attack and  
16 an attack meant to impact the fee dispute in the dispute.

17 THE COURT: That's the basis of your counterclaim  
18 then? The theory of your counterclaim is that?

19 MR. MOLDOVKY: No, I would say that's the connection  
20 point.

21 THE COURT: Okay.

22 MR. MOLDOVKY: The theories are -- the theory is very  
23 simple. Basically, they sought without basis and it's already  
24 been found by the courts in New York to have no basis.

25 They did this massive attack. And, again, I get

1 noticed in the middle of the night that goes on. Aside from  
2 the filings, there's an endless amount of letters.

3 And it was a vast attack on me that they then got a  
4 TRO for a year. And then, that was denied when a  
5 permanent -- or dissolved the permanent injunction was denied.

6 So, the idea is it was a whole basis injunction that  
7 has no basis, the courts found that had no basis. But then  
8 they had three sanction motions that in large part were looking  
9 to punish me based on violations of that.

10 And, again, it was all unfounded. And it was all  
11 very vicious and took a tremendous amount of time.

12 Additionally, we're also alleging that this very  
13 action is an abuse of process.

14 THE COURT: Uh-huh.

15 MR. MILLER: We're not, you know, currently alleging  
16 malicious prosecution, but an abuse of process that doesn't  
17 need termination to be alleged.

18 And why is this an abuse of process? Because Mr.  
19 Miller has made it very clear again and again that his purpose  
20 here is really seeking to silence me and to silence me about  
21 public record information.

22 And he'd walk away from all of this if I would just  
23 be silent, if I just wouldn't talk about his misconduct.

24 THE COURT: Uh-huh.

25 MR. MOLDOVKY: And that's not -- he can't get that

1 relief here. He hasn't alleged it. It's already been denied  
2 by the Appellate Division, the New York trial court, the New  
3 Jersey trial court. He abandoned his action there. So, he  
4 can't possibly get this relief.

5 THE COURT: Yeah.

6 MR. MOLDOVKY: But he's pounding on me to give him  
7 this relief.

8 THE COURT: See --

9 MR. MOLDOVKY: And that's part of it, too.

10 THE COURT: -- one dynamic that is missing in this  
11 case, which is ordinarily present in civil litigation and which  
12 has the effect of limiting the parties' desires in -- to see  
13 what legal relief can be obtained is that you're both lawyers.  
14 And it doesn't cost you any money to trade insults and wild  
15 theories to each other.

16 You can do that in your spare time. Instead of  
17 watching Sunday night football, you can write briefs and  
18 motions and tell each other what it is.

19 You're insulated from defamation by the fact that  
20 they're court pleadings. You're insulated economically,  
21 because you don't have to hire a lawyer.

22 And you just simply dump everything on the Court and  
23 says to the Court you figure it out while we play.

24 MR. MOLDOVKY: Your Honor --

25 THE COURT: You know, and you've done that now

1 through three states, several courts. And you've ended up  
2 here. And it's just not reasonable to simply dump all of this  
3 on the Court.

4 MR. MOLDOVKY: Your Honor, I --

5 THE COURT: I think what's appropriate here is to  
6 appoint a Special Master. And a Special Master will sit down  
7 with you as long as is necessary, of course at a fee, but as  
8 long as is necessary and parse all this out and see who is  
9 entitled to what documents.

10 We -- the public interest can not sustained this  
11 barrage. And not only I speak for this Court, I think I speak  
12 for the Court in Bucks County, in the state of New Jersey, in  
13 the state of New York. This is a travelling circus.

14 MR. MOLDOVKY: Your Honor --

15 THE COURT: Okay, okay, hold on a minute.

16 MR. MOLDOVKY: -- basically everything --

17 THE COURT: Hold on a minute.

18 MR. MOLDOVKY: I'm sorry.

19 THE COURT: And we -- you know, I just can't  
20 administer the docket of this Court with -- and I'm not saying  
21 that this doesn't have any merit. I mean, there may be merit  
22 to some of these claims.

23 But what I'm saying is the manner in which this  
24 litigation is being conducted is really inconsistent with the  
25 Rules. It's inconsistent with professionalism.

1           It does not give anybody related to this litigation,  
2   you know, much credit for understanding, you know, the Rules or  
3   applying the Rules.

4           And it's highly personal, which is another problem  
5   when you don't have a lawyer because the litigants may have  
6   personal animus and other motives, but there's a lawyer there  
7   whispering on the ear of the litigant, you know, this doesn't  
8   make sense. You know, we shouldn't do this and that.

9           You don't have that limit here. This is a free for  
10   all. It's like wrestling on television. You're just trying to  
11   do each other. And it's not going to be done.

12           There's a number of things that can be done. One  
13   could be to sever those cases and make them two different  
14   cases.

15           As I said, we should send this to a Special Master,  
16   who will try to figure out the litigation, and if the parties  
17   are interested, settle the case.

18           If they're not interested and you both want to  
19   continue to battle this, well, you have a referee. And the  
20   referee will be the Special Master.

21           So, we're not -- I mean, I reviewed the motions that  
22   are up for today, most of which really with a phone call could  
23   have been resolved.

24           It's just difficult to understand. So, what's your  
25   explanation as to how we resolve this matter?

1 MR. MOLDOVKY: First, I just want to say, Your Honor,  
2 maybe except for a word here or there, everything you just  
3 said --

4 THE COURT: Yeah.

5 MR. MOLDOVKY: -- makes so much sense and it's very  
6 much in line with what we're trying.

7 THE COURT: Uh-huh.

8 MR. MOLDOVKY: I will point out that's why I  
9 originally got another lawyer involved. The problem is anybody  
10 I get involved, he targets.

11 THE COURT: Uh-huh.

12 MR. MOLDOVKY: So, I got a lawyer involved and he  
13 sued him. I have another lawyer involved, so the name Steffan  
14 Malcoff, (phonetic), who had entered on one of the other cases,  
15 who had come to some of the hearings.

16 He was intending to enter here and is intending to  
17 enter here. He actually started off his practice in PA. He's  
18 now up in (indiscernible), it's okay. We realize he  
19 wasn't -- he never entered here.

20 So, literally, about two months ago, he went to the  
21 paperwork to enter here. We're just waiting for him  
22 to -- we're just waiting for him to get entered here. He's  
23 just waiting for the paperwork.

24 He already sent in, I believe, it's about two months  
25 ago. It's -- once he gets it, he was going to enter so Your

1 Honor should have some comfort that Steffan Malcolf has been  
2 advising and trying to help me.

3 Again, I got Mr. Pomerantz in. And I'm actually  
4 pretty well known as a place who seeks out counsel all the  
5 time. I sought out Mr. Miller's counsel. He used to help me  
6 with things.

7 So, I would say your --

8 THE COURT: Well, Mr. Pomerantz is a party here as  
9 well so --

10 MR. MOLDOVKY: Right, I got involved --

11 THE COURT: -- he can't be a lawyer and a party. I  
12 mean, that's really the problem.

13 MR. MOLDOVKY: Right.

14 THE COURT: He's your father-in-law, so that's a  
15 second consideration, a family consideration, that is involved  
16 here.

17 We don't have the judgment, professional judgment, of  
18 nonlitigants that can advise both of you that enough is enough.

19 MR. MOLDOVKY: Well, Your Honor, we'll just say to be  
20 very fair --

21 THE COURT: Yeah.

22 MR. MOLDOVKY: -- I've said I've been trying to just  
23 get a walkaway. And I've been on the Defense on this. This is  
24 Mr. Miller's case.

25 THE COURT: Yeah.

1 MR. MOLDOVKY: I wish I didn't have to be involved.  
2 I would do anything just to move on with my life.

3 THE COURT: Yeah.

4 MR. MOLDOVKY: It's -- to be very honest, Your Honor  
5 --

6 THE COURT: Yeah.

7 MR. MOLDOVKY: -- it's me who's being pursued. You  
8 saw I resolved with Mr. Ellner. I walked away from a half a  
9 million dollars in fees. I did everything I could to be  
10 resolved.

11 And, again, Mr. Malcoff has been advising me. But  
12 again, Mr. Pomerantz initially wasn't sued and he was the other  
13 attorney I got involved.

14 THE COURT: Okay. Mr. Miller?

15 MR. MOLDOVKY: Also, Your Honor, one more thing I  
16 would just say --

17 THE COURT: Yes.

18 MR. MOLDOVKY: -- I think both parties have made  
19 noises that welcoming a magistrate or somebody, some neutral  
20 person is very much welcome.

21 THE COURT: Okay.

22 Thank you, Your Honor. I think the appointment of a  
23 magistrate and Special Master --

24 THE COURT: No, I said a Special Master. It's not  
25 going to be a magistrate.

1 MR. MILLER: Okay, a Special Master's also a good  
2 resolution with the one comment that I think there's a  
3 disparity in each side settle -- I'm sorry, discovery  
4 compliance.

5 And I don't think the Special Master's fee should be  
6 split automatically down the middle. I think there should do  
7 some accounting for which side's being reasonable.

8 THE COURT: Well, the Special Master would recommend  
9 how the fee should be paid.

10 MR. MILLER: That's fine. Thank you, Your Honor.

11 And with respect to settlement after it -- as I think  
12 is in my papers, for what it's worth, it was the -- just before  
13 Yom Kippur, which for Jews is a great opportunity to ask  
14 forgiveness of fellow people, you know, Jews and non-Jews.

15 Mr. Moldovsky asked me he wanted to settle for zero  
16 dollars and he asked me to provide terms to settle for zero  
17 dollars.

18 And I gave him those terms. And part of those terms  
19 would be basically the Court willing to have a confidentiality,  
20 nondisparagement provision. And his response was to demand --  
21 to reject that and to demand \$500,000.

22 Just before entering this Court, I exchanged a couple  
23 of words, pleasant words, with Mr. Pomerantz. And he expressed  
24 his view that this case should have been settled long, long  
25 ago. And he would try his best and he's tried his best. He's,

1 you know, to use his statement, to resolve this matter.

2 I reached out to Mr. Stretton in terms of  
3 coordinating his --

4 THE COURT: You --

5 MR. MILLER: Mr. Stretton also in terms of --

6 THE COURT: Yeah, okay, but he's also involved in the  
7 case.

8 MR. MILLER: Yes, and he also volunteered.

9 THE COURT: Yeah.

10 MR. MILLER: I was coordinate -- I was trying to  
11 coordinate dates for a deposition I think or compliance with  
12 discovery. I don't remember.

13 He said on his own volition that this case should  
14 have been settled. And he'd be happy to broker -- I don't know  
15 that he can. I think whatever broker settlement that he'd be  
16 happy to broker a settlement.

17 This thing is a train that's gone off the rails for  
18 three years now. I don't understand what --

19 THE COURT: No, you both have -- let me just  
20 interrupt you to say you both have practices. You have  
21 clients. I'm sure that's been affected.

22 You have families and been in litigation, as you  
23 know, been a party in the litigation. It's just burdensome.

24 MR. MILLER: It --

25 THE COURT: It's just sucking up the energy that you

1 ought to be spending somewhere else.

2           Aside from that, you know, money is fungible, but  
3 life is short.

4           MR. MILLER: Totally agree.

5           THE COURT: Okay.

6           MR. MILLER: For the last three years, I've been  
7 suffering from these attacks. Mr. Moldovsky's --

8           THE COURT: Well, okay.

9           MR. MILLER: Mr. Moldovsky said that he's playing  
10 Defense. My words, but --

11          THE COURT: Yeah.

12          MR. MILLER: -- basically, that he's on the defense.  
13 He just filed another lawsuit in the District of New Jersey.

14          THE COURT: Okay.

15          MR. MILLER: Everything that Your Honor just  
16 (indiscernible) here --

17          THE COURT: Well, I would think that a settlement  
18 here needs to be global --

19          MR. MILLER: Absolutely.

20          THE COURT: -- and finished. And you're done with  
21 each other.

22               And I think what we will do, and I have a candidate  
23 in mind, which is a former magistrate Judge Thomas Rueter, who  
24 is at JAMS now, but who worked with me for 25 years.

25               And he's the finest human being as well as lawyer

1 that I can recommend because I think this is a case that not  
2 only involves legal principles, but I think it involves some  
3 humanity in here that needs to be done.

4 And what I would propose to do is to ask if he's  
5 willing to undertake this assignment to ask Judge Rueter to  
6 convene a conference first or maybe both together at his  
7 judgment that will deal with both the discovery issues and with  
8 settlement of the case on a global basis because I think to be  
9 able to understand the discovery issues, you have to understand  
10 the whole panorama here.

11 So, he'd be in a position to go both ways or either  
12 way. If there's a prospect for settlement and I'm -- some -- I  
13 don't think any of you have appeared before me here, but my  
14 philosophy is that the parties settle the case.

15 I don't force anybody to settle the case. I provide  
16 opportunities, but if you come back and you say, hey, I paid  
17 \$400 to get into court and I want a jury to tell me, Judge,  
18 forget you, I want them to tell me that. And if you have a  
19 legal claim, then it's up to you.

20 I think there are cases that just cry out to be  
21 settled. This is one of them. But if you don't want to  
22 settle, forget it. You know, you can stand on your own rights.

23 But I think that Judge Rueter can be helpful. You'd  
24 also -- you'll get an independent evaluation of what your case  
25 is.

1           That's another problem not having a lawyer that is as  
2           you know from your own clients, your own clients have a  
3           distorted view of their own -- the merit of their own cases.

4           They think they have a much stronger case. They  
5           don't understand the -- what can happen in Court. They don't  
6           understand that there's no sure thing.

7           They have a lawyer, you know, whispering in their  
8           ear. You don't have a lawyer whispering in your ear.

9           And as capable lawyers as you are, what do they say  
10          about a lawyer who represents himself has a fool for a client?  
11          And I don't mean that to be insulting --

12          MR. MILLER: No.

13          THE COURT: -- but I mean that to kind of be  
14          descriptive of the difficulty, a doctor who tries to cure  
15          himself, you know, has a fool for a patient. That's what I'm  
16          trying to get at before we, you know, before we face a disaster  
17          here.

18          MR. MILLER: Thank you, Your Honor. I appreciate  
19          that. Short of, you know, offering a zero dollar settlement  
20          and --

21          THE COURT: Yeah, well --

22          MR. MILLER: -- in exchange for, you know, a  
23          nondisparagement --

24          THE COURT: I don't know -- well, maybe that's what  
25          the case is worth. I have no idea.

1 MR. MILLER: I mean, I can't --

2 THE COURT: Yeah.

3 MR. MILLER: -- I'm not going to pay him for my own  
4 claim. That's --

5 THE COURT: Well, I don't know. That you'll tell  
6 Judge Rueter.

7 And as I said, if you don't want to settle, you don't  
8 have to settle, but the Court is not going to sort this out for  
9 both of you to serve both as a judge and as a psychoanalysis of  
10 your problems. That -- this is not the place to do it.

11 So, I think what we'll do is the following. I think  
12 I'm going to stay the case. I'm going to ask Judge Rueter to  
13 convene a conference with you to look at both the discovery of  
14 the matter and the settlement of the matter.

15 If he can settle the matter, that's fine. If he can  
16 not settle the matter, then to resolve the discovery issues.

17 MR. MILLER: Your Honor, I respectfully request both  
18 parties have put forth considerable efforts --

19 THE COURT: Yeah.

20 MR. MILLER: -- to brief. I think three different  
21 motions are fully briefed at this point. Could those be  
22 decided by the Court on submission without oral argument?

23 THE COURT: Which motions?

24 MR. MILLER: There's my Motion to Compel with respect  
25 to Mr. Stretton.

1           THE COURT: No, no, I will decide nothing further at  
2 this point --

3           MR. MILLER: Right.

4           THE COURT: -- until you have the conference with  
5 Judge Rueter and he sorts out -- the only thing is he will not  
6 decide a Motion to Dismiss. He will not do a merits -- a  
7 dispositive motion.

8           Those I would decide if they're warranted at an  
9 appropriate time, but all pre-trial discovery motions or  
10 scheduling motions will go to him and he will sort this out.

11           The only thing I'd like to hear his -- once he meets  
12 with you whether or not if the case is not settled whether or  
13 not it should be severed.

14           And we would do and do Bucks County if that's  
15 feasible and get that out of the way. And then, we do the  
16 counterclaim, whatever's left of that counterclaim separate.

17           It may be that his recommendation would be the other  
18 way. It's only a recommendation. It's my call under Rule 42,  
19 but I got a lot of trust on Judge Rueter and he'll be able to  
20 drill down into these motions.

21           I mean, I have my sense of what they are and -- but I  
22 think he'll be able to impart his wisdom and spend the time  
23 that is necessary to sort this out.

24           And in a way, to serve almost as your independent  
25 lawyer since you don't have a lawyer. He'll be able to do

1 that. So, that's where I'm going.

2 So, any final comments?

3 MR. MILLER: I know that this Court has no authority  
4 over the proceeding in the District Court of New Jersey --

5 THE COURT: Yes.

6 MR. MILLER: -- but it may be helpful to both parties  
7 if Your Honor would express some opinion as to --

8 THE COURT: Yeah.

9 MR. MILLER: -- whether the New Jersey action --

10 THE COURT: Who's the judge in New Jersey?

11 MR. MOLDOVKY: Your Honor, it's -- I --

12 MR. MILLER: Quraishi.

13 MR. MOLDOVKY: -- I don't remember the name. I think  
14 it's a new judge, but I don't remember the name.

15 THE COURT: Oh, is it in Camden?

16 MR. MILLER: No.

17 MR. MOLDOVKY: It's a federal.

18 THE COURT: Right.

19 MR. MOLDOVKY: It's in federal court there. I think  
20 in Trenton.

21 THE COURT: Oh, in Trenton.

22 MR. MILLER: It's Judge Quraishi, Q-U -- I'm probably  
23 mispronouncing it.

24 THE COURT: Oh, yes.

25 MR. MILLER: It starts with a Z, the first name --

1 THE COURT: Yes.

2 MR. MILLER: -- but Quraishi.

3 THE COURT: Well, she's not a new judge.

4 MR. MOLDOVKY: I think it's a he.

5 MR. MILLER: He's a new judge appointed in May.

6 THE COURT: Oh, then, it's someone different than --

7 MR. MILLER: Q-U-R-A-I-S-H-I.

8 THE COURT: Okay, well --

9 MR. MILLER: Pakistani --

10 THE COURT: If you think that there is any relation  
11 here -- the two of you are the parties?

12 MR. MILLER: Yeah.

13 MR. MOLDOVKY: Yes, Your Honor --

14 THE COURT: Yeah.

15 MR. MOLDOVKY: -- and my entity, but I would just ask  
16 if Your Honor hasn't seen it that I don't know that Your Honor  
17 should be --

18 THE COURT: No, I don't want to get involved.

19 MR. MOLDOVKY: -- making an opinion.

20 THE COURT: All I would say is that I would ask you  
21 maybe for you to consider to say to the judge simply we're  
22 engaged in a global settlement. We'd like to get, you know, 90  
23 days or some such a thing.

24 And then, we'll come back here and do the -- I have  
25 no idea what the case is about, but it seems a waste of

1 resources to proceed with no matter what the case is and what  
2 the merits are, if you can resolve the whole thing.

3 MR. MOLDOVKY: No, no, I --

4 THE COURT: Was just simply that. And if you would  
5 like me to, both you agree, then I will contact the judge and  
6 ask him and say, look, there is a -- the potential for a global  
7 settlement.

8 Would you agree to grant the parties some period of  
9 time to do that? And if they can not, they'll come back here.  
10 No prejudice.

11 MR. MOLDOVKY: There's no objection from me to that  
12 whatsoever, Your Honor.

13 THE COURT: Okay.

14 MR. MILLER: I very much appreciate it.

15 THE COURT: Well, give my law clerk then the caption  
16 of the case and the New Jersey number. And we'll contact the  
17 judge and ask him to do that.

18 What stage is that in?

19 MR. MOLDOVKY: We just -- we're waiting -- we just  
20 filed a suit and served. We haven't even gotten the first  
21 filing --

22 THE COURT: Okay.

23 MR. MOLDOVKY: -- answer or motion. It's that early.

24 THE COURT: Okay.

25 MR. MILLER: I can give the docket number in a

1 second. I have it up here.

2 MR. MOLDOVKY: We can give it to the law clerk  
3 afterwards.

4 THE COURT: Okay. So, to make a long story short,  
5 we're going to stay the proceedings here. Nobody needs to do  
6 anything more until further order of the Court.

7 We will, pursuant to Rule 53, appoint Thomas Rueter.  
8 And I cannot appoint him till I talk to him, but assuming that  
9 he'd be willing to undertake this -- I have not discussed this  
10 at all with him, maybe I should have, I will appoint Thomas  
11 Rueter.

12 So, to serve as a Special Master with authority to  
13 both assist the parties in settlement of the case and/or rule  
14 on all discovery motions that are currently pending before the  
15 Court and to appropriately report to the Court thereafter.

16 And I'll have an order spelling out his authority, et  
17 cetera, fees to be apportioned by the Special Master at the  
18 conclusion of the litigation.

19 I'm not sure, speaking of fees, I think what may  
20 happen, which I think JAMS you pay ahead of time some amount,  
21 but I think at the conclusion, he can then apportion what that  
22 amount may be.

23 So, if one party of course is the culprit, that could  
24 be part of the resolution, how the fees are going to split.  
25 So, that'd be a way to do it as well.

1           So, I'm pleased that both of you seem to be of the  
2 mind to at least taste the wine here. And we would be -- at  
3 the meantime, is there something else we can do, we will do  
4 that, but I think this is a necessary step in either litigation  
5 or resolution of all these claims.

6           Okay, anything else?

7           MR. MILLER: No, thank you, Your Honor.

8           THE COURT: Okay.

9           MR. MILLER: Thank you for your wisdom here, Your  
10 Honor.

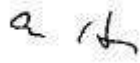
11           THE COURT: Very good. Okay, we're adjourned. Thank  
12 you both.

13           MR. POMERANTZ: Thank you, Your Honor.

14           (Proceedings concluded at 10:32 a.m.)  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

**CERTIFICATE**

I, Chris Hwang, court approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

November 26, 2021

Chris Hwang  
Transcriber

Date